

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
BellSouth Telecommunications, Inc.)	
Request for Declaratory Ruling that State)	
Commissions May Not Regulate Broadband)	WC Docket No. 03-251
Internet Access Services by Requiring)	
BellSouth to Provide Wholesale or Retail)	
Broadband Services to CLEC UNE Voice)	
Customers)	

COMMENTS OF CATENA NETWORKS, INC.

Catena Networks, Inc. (“Catena”) hereby comments in support of BellSouth’s emergency request that the Commission declare that State regulatory commissions may not require BellSouth to provide broadband Internet access services, such as DSL, to customers of competitive carriers providing service using UNE-P.¹ As BellSouth demonstrated in its request, several State public utility commissions have compelled BellSouth to provide its DSL services in circumstances where a competitive carrier is providing voice service to that subscriber using UNE-P, notwithstanding the Commission’s clear determination that an incumbent carrier is not required to provide DSL service when it is no longer the voice provider.² In these comments, Catena -- as a

¹ *Pleading Cycle Established for Comments on BellSouth’s Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Such Services to CLEC Voice Customers*, WC Docket No. 03-251, Public Notice, DA 03-3991 (rel. Dec. 16, 2003)(hereafter cited as “*BellSouth Petition*”). The Commission subsequently extended the comment date to January 30, 2004, DA 03-4111, released December 30, 2003.

² *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 *et al.*, 18 FCC Rcd 16978, 17141 (2003) at ¶ 270

manufacturer of telecommunications equipment that incorporates DSL capabilities -- confirms the adverse impact on incumbent carrier incentives to invest in advanced services equipment as a result of the “free rider” effect of these State rulings. Catena also confirms the significant costs imposed on the incumbent carriers by such an obligation.

Catena is a leading developer of advanced communications systems, and thus is highly interested in eliminating any regulatory impediments to carrier deployment of broadband services, including DSL. Catena is a privately held corporation, headquartered in Redwood Shores, California, with its research and development operation in Kanata, Ontario, Canada. Catena was founded in December 1998 with a vision to create the New Access Architecture for the Converged Public Network and, in the process, make broadband access as ubiquitous as plain old telephone service (“POTS”). Catena has also actively participated in several of the Commission’s proceedings concerning deployment of advanced services.

Catena is poised to help bring broadband capabilities throughout the country, and the Commission’s recent *Triennial Review Order* has helped further that goal by eliminating much of the uncertainty surrounding the incumbent carriers’ unbundling obligations for packet switching and other advanced capabilities. Indeed, since the Commission’s decision to eliminate unbundling for many advanced services, Catena has enjoyed exponential growth in sales of its DSL-enabled equipment. Unfortunately, regulatory disincentives and growing uncertainty resulting from State commission imposition of DSL “bundling” obligations -- *i.e.*, requiring the ILECs to continue to provide DSL service even after a competitive carrier captures the subscriber using UNE-

(rejecting the CompTel request for unbundling of the low-frequency portion of the loop) (hereafter cited as “*Triennial Review Order*”).

P so that the competitive carrier can offer a “bundle” of voice and broadband service without investing in any of its own facilities -- have slowed, and in some cases stopped, ILEC investment in new technologies capable of providing advanced broadband services. In light of the heightened importance of the availability of advanced telecommunications to our country’s educational system and economy, Catena urges the Commission to act expeditiously to overturn these misguided State decisions.

Prior to the *Triennial Review Order*, Catena was regularly told by potential ILEC customers that while Catena’s technology appeared to be economically and technically an excellent product, the regulatory uncertainty surrounding the unbundling obligations with regard to advanced services equipment made it impossible for the carrier to make any significant investment decisions. The threat of unbundling was magnified by State commission decisions as to the price at which unbundled network elements would be sold, with some states further reducing TELRIC prices in order to “jumpstart” competition.³ Thus, even the degree of interest by the ILECs in Catena’s broadband

³ E.g., *Generic Proceeding to Establish BellSouth Telecommunications, Inc.’s Interconnection Services, Unbundled Network Elements and other Related Elements and Services*, Docket No. 00-UA-999, Mississippi Public Service Commission, 2001 Miss. PUC LEXIS 182 (October 12, 2001):

The Commission finds that the rates produced by the BellSouth cost study, as adjusted by the Commission as described herein, fall within a reasonable TELRIC range. The Commission notes that in a recent Order in a proceeding similar to this one, the Louisiana Public Service Commission discounted BellSouth's proposed nonrecurring rates by fifty percent (50%). Considering all of the evidence in this Docket, the Commission finds that a competitive discount of approximately ten percent (10%) on all loop and UNE combination recurring rates produced after the other input modifications ordered herein, as well as a 50% discount to all nonrecurring charges proposed by BellSouth, should be adopted. These discounts will produce rates that are within, and indeed possibly below,

technologies varied by State, even where no immediate purchases were forthcoming. The incumbent carriers reacted as expected to the uncertainty and disincentives of unbundling.

Likewise, the incumbent carriers responded positively to the *Triennial Review Order*'s removal of uncertainty and elimination of unbundling obligations for packet switching by making new investments in advanced services equipment. As mentioned above, Catena has experienced significant sales growth, and other equipment providers have seemingly had similar experiences.⁴ Incumbent carriers have announced intentions

any reasonable range that would be produced by TELRIC. The Commission finds that these discounts are appropriate at this time based on the state of local competition in Mississippi, which although robust is still in its early development stages, as well as the economic conditions within the State. In addition, the regulatory policy of this Commission is to promote the development of local competition in Mississippi. This policy also supports the competitive discounts adopted herein.

⁴ E.g., Adams Harkness & Hill, Communications Technology Industry Report – “The Return of a Networked World: Key Trends in Communications Equipment” (October 9, 2003) (http://www.ahh.com/files_and_pdfs/press_rel_pdfs/commtech%20industry%2010-9-03.pdf) at pp. 3, 5 and 6. Catena Networks has experienced exponential quarter over quarter revenue growth since the adoption of the *Triennial Review Order*. Catena's competitors have also experienced significant growth in valuation as a result of the adoption of the *Triennial Review Order*. The following charts show the recent growth in valuation for Advanced Fibre and Alcatel [compared vs. S&P 500].

to increase dramatically investment in broadband technologies.⁵ However, State commission decisions are threatening to stop or slow these deployment plans.



⁵ E.g., Verizon News Release, “Verizon Outlines Leadership Strategy for Broadband Era,” (January 8, 2004)(Verizon committing to investing \$3 billion over the next two years to bring broadband to the mass market); SBC News Release, “SBC

As BellSouth indicates in its petition, Florida, Georgia, Louisiana and Kentucky have imposed “forced service” requirements on the incumbent carriers. BellSouth has been ordered to provide DSL service to CLEC customers served by UNE-P. Such an obligation is inconsistent with the *Triennial Review Order*, will impose significant costs on the incumbent carriers, and will deter investment in broadband technologies, all to the detriment of the public interest. Subscribers in these States are likely to find that they have been “red-lined” without access to telephone company provided broadband services. Incumbent carriers like BellSouth are unwilling to make the investments necessary to provide DSL services because the State regulators are imposing increased costs and allowing competitive carriers a “free ride” on the BellSouth investment. The incumbent carriers must make significant investments in order to be able to offer a “bundle” of voice and broadband services – if these State commission decisions are allowed to stand, the competitive carrier will be able to offer the same bundle without having made any investment whatsoever. The incumbent carriers will be reluctant to make the necessary investment if they have a lower likelihood of obtaining or retaining subscribers.

Moreover, BellSouth faces increased costs as a result of these decisions because it will need to develop and implement OSS functionality to accommodate “reverse line sharing,” whereby the competitive carrier acquires the loop from BellSouth and “unbundles back” the high-frequency portion of the loop to BellSouth. Complicated issues can arise when there is such “joint operation,” including determining responsibility for service problems and coordination of testing. The complexity is exacerbated insofar as BellSouth would need to resolve these issues and re-design its OSS systems for

Communications Reaches 3 Million DSL Customer Mark,” (September 9, 2003)(plans

multiple competitive carriers in a “collaborative” process, rather than through voluntary negotiations. Catena has spent significant effort in designing OSS functionality into its product line, and can confirm that re-designing those systems to accommodate “reverse line sharing” will take significant additional resources.

The Commission recognized these significant drawbacks to such obligations. Thus, in the *Triennial Review Order* the Commission declined CompTel’s request to require unbundling of the voice or low-frequency portion of the loop, the equivalent to the States’ requiring BellSouth to provide DSL services to CLECs’ UNE-P customers.⁶ Indeed, because of these types of complications, in its previous decisions the Commission declined to require the incumbent carriers to unbundle the high-frequency portion of the loop when the incumbent carrier was not providing the subscriber with voice service.⁷ Thus, the Commission has already determined these issues, so the State commissions are not merely filling a policy vacuum. Rather, their actions are inconsistent with Commission decisions. Moreover, because of the adverse effect on broadband deployment, these State decisions will impede an important federal policy – the rapid deployment of advanced services to all Americans.⁸ Under these circumstances, it is appropriate for the Commission to preempt the decisions of the Florida, Georgia, Kentucky and Louisiana commissions, and to make clear that other similar State actions will not be tolerated.

call for making DSL available to nearly 80 percent of SBC’s customers in 2004).

⁶ *Triennial Review Order* at ¶ 270.

⁷ *E.g., Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 20912 (1999) at ¶ 72.

For all of these reasons, Catena urges the Commission to grant expeditiously BellSouth's Emergency Request for Declaratory Ruling.

Respectfully submitted,

By /s/
Stephen L. Goodman
Wilkinson Barker Knauer, LLP
2300 N Street, N.W. Suite 700
Washington, D.C. 20037
(202) 783-4141
Counsel for Catena Networks, Inc.

Dated: January 30, 2004

⁸ Telecommunications Act of 1996 § 706(a).